

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DONALD BUFORD,

Petitioner,

v.

JIM SUTTEN, Unit Manager,

Respondent.

ORDER

04-C-959-C

Petitioner Donald Buford is a prisoner at the Columbia Correctional Institution in Portage, Wisconsin. He has submitted an original and one copy of a proposed complaint and asks for leave to proceed in forma pauperis.

Because he is a prisoner, petitioner is subject to the 1996 Prison Litigation Reform Act. This means that before the court will review the merits of his complaint, he must pay an initial partial payment of the \$150 fee for filing his complaint which has been calculated from his trust fund account statement according to a formula described in 28 U.S.C. § 1915(b). In this instance, however, I have decided to delay assessing an initial partial payment of the fee because petitioner's complaint violates Fed. R. Civ. P. 8 as submitted.

Fed. R. Civ. P. 8. requires that a complaint 1) set forth a "short and plain statement of the grounds upon which the court's jurisdiction depends"; 2) a short and plain

statement of the claim showing that the pleader is entitled to relief; and 3) a demand for judgment for the relief the pleader seeks.” Pursuant to Rule 8(e), “each averment of a pleading shall be simple, concise and direct.”

The single-spaced, handwritten allegations in petitioner’s complaint are set out in a single paragraph spanning 14 pages. Throughout the pages, petitioner refers numerous times to the contents of 128 pages of exhibits he has included as part of the complaint. In the caption of the complaint, petitioner names only Jim Suttan as a respondent. However, in the caption of his petition for leave to proceed in forma pauperis, petitioner names 12 additional respondents. On another piece of paper titled “Notice of Lawsuit And Request For Waiver of Service of Summons,” petitioner again lists the names of Suttan and 12 others as persons to be served with his complaint.

Ordinarily, a complaint should not be accompanied by evidentiary materials that may be useful to prove the claims raised in the complaint. The submission of evidentiary materials is proper in support of motions for a preliminary injunction or summary judgment, or at trial. Petitioner’s attempts to incorporate the content of the exhibits into the complaint are contrary to the dictates of Rule 8. "The primary purpose of [Rule 8] is rooted in fair notice: a complaint 'must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is.'" Vicom, Inc. v. Harbridge Merchant Servs., Inc., 20 F.3d 771, 775 (7th Cir. 1994) (119-page, 385-paragraph complaint "violated the letter and spirit of Rule 8(a).")

Because it is not clear who petitioner is suing and what each respondent is alleged to have done to violate petitioner's rights under the constitution, I will dismiss this case unless petitioner amends his complaint to 1) include a caption that names all of the persons he intends to sue; 2) remove the exhibits and eliminate the vague references to them; 3) set out his claims against each of the respondents in short and plain statements made in numbered paragraphs; and 4) identify the relief he wants from the court. If petitioner submits a complaint that complies with Rule 8, I will enter an order assessing him an initial partial payment of the filing fee. However, if he fails to submit a complaint that complies with Rule 8, I will dismiss this case on the court's own motion. To assist petitioner in revising his complaint, I am returning the extra copy of his complaint to him with this order. The court will retain the other copy for record purposes.

ORDER

IT IS ORDERED that petitioner may have until January 14, 2005, in which to submit a proposed complaint that conforms to the requirements of Fed. R. Civ. P. 8, as explained above. If, by January 14, 2005, petitioner fails to file the required amended

complaint or show cause for his failure to do so, then this case will be dismissed without prejudice on the court's own motion.

Entered this 29th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge